THE HON'BLE MR JUSTICE N.V. RAMANA

Writ Petition No. 29072 of 1997

Dated: 16.11.2005

Between:

1 T. Seetharama Rao, S/o Padmanabha Rao,
R/o Tirmalgiri Village, Anumula Mandal,
Nalgonda District and 34 others.

..... PETITIONERS

AND

1 Governement of Andhra Pradesh, rep. by its Secretary,
I & CAD Department, Hyderabad and 4 others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE N.V. RAMANA

W.P. No. 29072 of 1997

O r d e r:

The petitioners, who are 35 in number, claiming to be farmers, have filed this writ petition assailing the action of the respondents in not taking steps to acquire the lands of the petitioners and paying them compensation in respect of an extent of Ac.114.00, situated in various survey numbers, as reported by the Mandal Revenue Officer, Anumula, vide his letter in Lr. No. B/768/97, dated 25.04.1997, as being illegal and violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India.

The petitioners claim to be the absolute owners of various extents of patta lands situated in different survey numbers as shown in the Annexure filed along with the writ petition. The petitioners state that prior to 1968-69, they irrigated their lands by making use of the rainwater collected in “Pedda Cheruvu”. In 1968-69, water from the Nagarjuna Sagar Left Canal was released into “Pedda Cheruvu”, and since then they made use of the said water to irrigate their lands. While so, the petitioners stated that in 1988-89 the Engineering Wing of the Irrigation Department raised the

level of the bund and weir of “Pedda Cheruvu”, and due to this, their lands are getting submerged during rainy season, making them totally unuseful for cultivation and irrigation. As they are unable to cultivate or irrigate their lands during rainy season, the petitioners state that they made representations to respondent No.3-Revenue Divisional Officer, Nalgonda, who in turn directed the Mandal Revenue Officer, Anumula, to conduct an enquiry and submit his report. The Mandal Revenue Officer, Anumula, having conducted an enquiry submitted his report vide letter No.B/768/97, dated 25.04.1997, enclosing a map showing the extent of the lands that are under submergence. It is the case of the petitioners that though there is a positive report in their favour, no action has been taken by the respondents either to acquire their lands or pay them compensation. Therefore, they filed the present writ petition.

Heard the learned counsel for the petitioners and the learned Government Pleader for Irrigation.

The learned counsel for the petitioners submitted that the petitioners are poor and small farmers owning small extents of land. Except the lands in question, which are getting submerged under “Pedda Cheruvu” during rainy season, making them totally unuseful for cultivation and irrigation, the petitioners do not own any other lands in the village. He submits that though there is a positive report from the Mandal Revenue Officer, Anumala, stating that the lands of the petitioners are getting submerged during rainy season and as such, they should be paid compensation, no action has been taken by the respondents. He submits that due to raising of the bund and weir of “Pedda Cheruvu” by the Engineering Wing of the Irrigation Department, the lands of the petitioners are getting submerged during rainy season, making them totally uncultivable. Since by the action of the respondents in raising the bund and weir of “Pedda Cheruvu”, the lands of the petitioners are getting submerged, making them unuseful during rainy season, the learned counsel for the petitioners submits that the respondents should be made criminally liable for the obvious encroachment of their lands by the rain waters. Submergence of the lands, which is the result of the action of the respondents, being a continuing action, the petitioners are entitled to file writ petition at any point of time when their lands are submerged, and no delay in approaching the Court can be attributed to them, and more so when the respondents despite there being a positive report from the Mandal Revenue Officer, Anumula, that the lands of the petitioners are getting submerged

during rain season, did not take any steps either to pay compensation or acquire their lands. The action of the respondents not only amounts to criminal encroachment the lands of the petitioners, but also amounts to depriving them of their right to livelihood under
Article 19(1)(g) and right to property under Article 300-A of the Constitution of India, without paying them any compensation. He, therefore, prayed that the respondents be directed to acquire the submerged lands and pay them compensation or in the alternative to provide them alternative lands.

Respondent No.2, namely the District Collector, Nalgonda, filed counter-affidavit on behalf of the respondents. The learned Government Pleader for Irrigation representing the respondents submitted that “Pedda Cheruvu” was constructed during Nizam’s period. The total ayacut of “Pedda Cheruvu” is Ac. 114.32. Its Full Tank Level (F.T.L.) is 91.00 M. and its storage capacity is 1.06 M. Cumts. “Pedda Cheruvu” comes under the command area of Nagarjuna Sagar Project. After commissioning of Nagarjuna Sagar Canals during the year 1967-68, neither the bund nor the weir of “Pedda Cheruvu” were either strengthened or raised, and as such, the question of submergence of the patta lands, much less the lands of the petitioners, does not arise. There is no cause of action arisen for the petitioners to file the writ petition. The petitioners with a view to create cause of action, filed representations before the Revenue Divisional Officer stating that their lands are getting submerged during rainy season. As per the survey conducted by the Mandal Revenue Officer and the Assistant Engineer in the presence of the villagers, only an extent of Ac.90.23 in patta land and an extent of 70.27 Gts., of Government land is under submergence of “Pedda Cheruvu” at (F.T.L.), while the other lands are under cultivation of the landowners. Only when “Pedda Cheruvu” is at F.T.L., the lands of the petitioners are getting submerged, and when it is not at F.T.L., the petitioners are cultivating the lands. There is no cause of action for the petitioners to file the present writ petition and the claim made by the petitioners is time barred. He submitted that similar writ petitions in W.P. Nos.21504 and 4828 of 1995 with reference to submergence of lands under different tanks in Nizamabad, filed with inordinate delay, were dismissed vide separate orders dated 09.07.2004 and 18.01.2005 passed by this Court. He thus prayed that the writ petition be dismissed.

Though the petitioners contended that by reason of raising of the bund and weir of “Pedda Cheruvu” by the Engineering Wing of the Irrigation Department during 1988-

89, their lands are getting submerged during rainy season, making them unuseful for cultivation, and the action of the respondents amounted to criminal encroachment of their lands, the same is disputed by the respondents *inter alia* contending that "Pedda Cheruvu" was constructed during the regime of Nizam, and that they never raised the level of the bund and weir of "Pedda Cheruvu".

Be that as it may, since disputed questions of fact were involved, a learned Judge of this Court (Sri. B. Prakash Rao, J.) by order dated 19.11.2002 directed the District Judge, Nalgonda, to conduct a joint survey of the lands, along with the District Collector, Nalgonda, the Executive Engineer, I & CAD, Nalgonda and the Executive Engineer, NSPC Division, Miryalaguda, Nalgonda, and submit his report. The survey having been conducted in the presence of the petitioners and other villagers, a report is filed. A reading of the report would disclose that "Pedda Cheruvu" was constructed during Nizam Government, its total ayacut is Ac.210.17 gts., Full Tank Level is +91. mtrs and top bund level is +93.10 mtrs. The report while furnishing the details of the lands of the petitioners and their submergence, denied the submission of the petitioners that the level of the bund and weir of "Pedda Cheruvu" was raised, *inter alia* states as follows:

> It is submitted that as per the above details, (35) petitioners have title by reason of their being shown as pattedars or as assignees or as inamdars only to an extent of Acrs. 112.38 Gts. Out of the said extent only Acrs. 72.11 Gts., is coming under submergence at Full Tank Level, including the smaller extents which are under submergence even now when the water is below sluice sill level. In this connection, it is submitted that the Asst. Director, Survey & Land Records, Nalgonda in his report and sketch which are appended hereto as Annexure-III had mentioned that 43 Sy. Nos. are affected by the waters of Peddacheruvu and he gave all those 43 Sy. Nos. and stated that the total extent of those survey numbers is Acrs. 197.25 Gts. He further stated that out of the said extent of Acrs. 197.25 Gts., an extent of Acrs. 155.15 Gts., would get submerged. He has also shown the extents which are presently covered by the water. The extent of Acrs. 72.11 Gts., which is mentioned as submergible out of the Ac5rs. 112.28 Gts., shown above as belonging to writ petitioners is part of the Acrs. 155.15 Gts., mentioned as submersible by the Asst. Director, Survey & Land Records, Nalgonda.

From the above, it is clear that only an extent of Ac.72.11 gts. is coming under submergence at F.T.L. The submergence of the lands of the petitioners, it is stated, is not a new phenomenon, and that they were getting submerged even prior to 1967-68 at F.T.L. which is evident from the revenue records, and that the petitioners were cultivating the lands as and when the waters in "Pedda Cheruvu" are receding, and that even though the water at present is below sluice sill level, lands belonging to some of the petitioners are still under submergence.

Since the report discloses that an extent of Ac. 72.11 Gts., belonging to some of the petitioners are getting submerged only at F.T.L., and that they were under submergence even prior to 1967-68, and having regard to the fact that “Pedda Cheruvu” is said to have been constructed by Nizam Government, no criminal encroachment can be attributed to the respondents, and more so when the respondents denied the raising of the bund and weir of “Pedda Cheruvu”, based on which alleged act, the petitioners filed the present writ petition.

Since the petitioners are cultivating the lands at least for some part of the year, except being temporarily dispossessed during rainy season in respect of some portions of their lands, and that too when they are getting submerged when “Pedda Cheruvu” is at its F.T.L., I am of the considered opinion that the petitioners cannot be said to have been deprived of their right to livelihood under Article 19(1)(g) or their right to property under Article 300-A of the Constitution of India, by the Government, and more so when it not the case of the petitioners that the Government having acquired their land for “Pedda Cheruvu” did not pay them any compensation, and rather it is their case that the respondents should be directed to acquire their lands which are getting submerged and pay them compensation.

Since the lands of the petitioners are said to be getting submerged since a long time, no Mandamus can be given to the respondents to acquire the lands of the petitioners, which are said to be getting submerged under “Pedda Cheruvu” during rainy season. No doubt, there is delay on the part of the petitioners in approaching the Court, but inasmuch this Court has already admitted the writ petition and also called for a report from the District Judge, Nalgonda, and considering the contents thereof, this Court gave oral directions to the Government Pleader for Irrigation on 01.08.2005 and 22.08.2005 to ascertain from the District Collector, Nalgonda, whether any alternative land is available for providing the same to the petitioners. The District Collector having ascertained from the Mandal Revenue Officer, Anumula, vide his letter dated 31.08.2005 addressed to the Government Pleader for irrigation, stated that the Mandal Revenue Officer, vide his letter dated 29.08.2005 reported that no alternative Government land is available in the village for providing to the petitioners. Since the District Collector, Nalgonda, has reported that there is no alternative land available in the village, no direction can be given to the respondents to provide alternative lands to the petitioners in lieu of the lands which are getting submerged during rainy season.

In the result, there is no merit in the writ petition, and the same is accordingly dismissed.

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N.V. RAMANA, J.

Date: 16th November 2005.

KSR